

CONSULTING AND PROFESSIONAL SERVICES AGREEMENT

Between

Commonwealth Edison Company,

acting by and through its agent,

Exelon Business Services Company, LLC

and

Summit Blue Consulting, LLC

Dated as of December 12, 2008

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This Consulting and Professional Services Agreement (this "Agreement") is effective as of the date provided on the cover page hereof between the subsidiary of Exelon Corporation identified on the cover page hereof, acting by and through its agent, Exelon Business Services Company, LLC ("Exelon"), and the contractor entity ("Contractor") as defined below and identified on the signature page hereof. Any references below to Exelon will, if appropriate, be understood to mean those Exelon Affiliates identified in **Exhibit A** (as amended from time to time by Exelon) which are parties to any future Purchase Orders executed for the performance of different "Specific Projects" (as defined below). In this Agreement and in all future agreements formed with reference to it, the term "Exelon" may refer to one or more than one Affiliate.

This Agreement establishes the terms and conditions on which Exelon may, from time to time, purchase Services (as defined below) from Contractor, which purchases shall be evidenced by the delivery by Exelon to Contractor from time to time of Purchase Orders or similar writings, or by electronic data interchange. The purchase of the Services by Exelon from Contractor is expressly governed by the terms and conditions contained or referred to herein.

ARTICLE 1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

"Affiliate" means, with respect to Exelon, those entities identified in **Exhibit A** as amended from time to time by Exelon, and also includes those entities that now or hereafter own, are owned by or under common control with Exelon, where "control" means at least a fifty percent (50%) ownership interest.

"Agreement" means this Consulting and Professional Services Agreement between Contractor and Exelon together with all appendices, exhibits, schedules, and attachments hereto, and all Purchase Orders and Change Orders, all as such may be amended, restated, or supplemented from time to time as stated herein.

"Change Order" means a written order issued by Exelon that permits and directs an addition to, deletion from, or adjustment or revision to a Purchase Order.

"Contract Documents" shall have the meaning assigned to such term in **Exhibit B**, the Scope of Work for a Specific Project.

"Contractor" means the party identified in the Agreement which is to perform the Services pursuant to Purchase Orders for Specific Projects and includes (unless the context of this Agreement clearly requires otherwise) Subcontractors and their respective employees and agents.

"Contractor's Designated Representative" shall mean Contractor's representative, or his duly authorized representative, who will provide the general administration of this Agreement for Specific Projects on behalf of Contractor and shall be Contractor's field representative in all matters relating to this Agreement. Contractor's Designated Representative shall be in attendance at the Site during the performance of the Work. Contractor may change its representative at any time. However, a fully qualified replacement must be ready to assume responsibility for Contractor's Designated Representative and is subject to prior approval of Exelon's Designated Representative, which shall not be unreasonably withheld.

“Contractor Personnel” means any and all individuals, including partners, employees, officers, agents and other persons assigned by, through or on behalf of Contractor or its Subcontractors to perform the Work. Also referred to in Exelon’s Use of Contractor Policy as a “Third Party Contractor.”

“Contractor Specifications” shall mean the final Contractor specifications for the Specific Project to be provided by Contractor, all in accordance with the mutually agreed upon Scope of Work set forth in the Purchase Order for a Specific Project.

“Day(s)” shall mean any calendar day which is not a Saturday, Sunday or legal holiday in the state where the Specific Project is located.

“Designated Environmental Contractor” means an Exelon contractor or supplier whose Work involves significant environmental aspects and potential impacts, and who has been designated as such by Exelon in the Contract Documents.

“Designated Safety Contractor” means an Exelon contractor or supplier whose Work involves exposure to significant safety and health risks, and who has been designated as such by Exelon in the Contract Documents.

“Disaster Recovery Plan” shall mean a disaster recovery plan set forth in Section 3.8.

“Dollars” and **“\$”** mean United States Dollars.

“Drawings” shall mean the final drawings for the Specific Project to be provided by Contractor, all in accordance with the mutually agreed upon Scope of Work set forth in the Purchase Order for a Specific Project.

“Effective Date” shall mean, notwithstanding anything herein to the contrary, the date set forth on the cover page hereto.

“Environmental Laws” means any federal, state, or local law, regulation, ordinance, standard, guidance, or order pertaining to the protection of the environment, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq. (“CERCLA”); the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq. (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. 2601, et seq. (“TSCA”); the Clean Air Act, 42 U.S.C. 7401, et seq. (“CAA”); the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. (“FWPCA”); and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq. (“OSHA”) and any other law that governs: (a) the existence, removal, or remediation of Hazardous Substances on real property; (b) the emission, discharge, release, or control of Hazardous Substances into or in the environment; or (c) the use, generation, handling, transport, treatment, storage, disposal, or recovery of Hazardous Substances.

“Exelon Data” shall mean any information provided by Exelon as so designated.

“Exelon’s Designated Representative” shall mean Exelon’s duly authorized representative who will provide the general administration of this Agreement for Specific Projects on behalf of Exelon and shall be Exelon’s field representative in all matters related to this Agreement. Exelon may, in its sole discretion, change its representative at any time or from time to time, and shall promptly notify Contractor, in writing, of any such change.

"Final Completion" shall mean the date for completion of the Specific Project listed in the Purchase Order or Project Schedule for such Specific Project. In the event of a conflict between the date of Final Completion listed in the Purchase Order and the Project Schedule for a Specific Project, the date listed in the Project Schedule shall govern.

"Governmental Authorities" means any and all federal, state, county, municipal, local, foreign or other government, or any agency or subdivision of any or all of the foregoing, or any quasi-governmental agency, self-regulating organization, board, bureau, commission, department, instrumentality, or public body, or any court, administrative agency, arbitrator, mediator, regulator, or other tribunal or adjudicative authority.

"Hazardous Substances" means and includes flammable substances, explosives, radioactive materials, asbestos, hazardous wastes or substances, crude oil or any fraction thereof, refined or partially refined petroleum products or any other wastes, materials, or pollutants included in the definition of "hazardous substance," "toxic substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "pollutant," "special waste," or words of similar import under any Environmental Law.

"Health and Safety Laws" means any federal, state, or local law, regulation, ordinance, standard, guidance, or order pertaining to safety and health in the workplace, including the Occupational Safety and Health Act, 29 U.S.C. 651 et seq. ("OSHA"), and the Toxic Substances Control Act, 15 U.S.C. 2601, et seq. ("TSCA").

"Jobsite" means the location of the Work as set forth in the Purchase Order.

"Law" or "Laws" shall mean all laws, statutes, codes, ordinances, rules, regulations, lawful orders, applicable guidance documents from regulatory agencies, judicial decrees and interpretations, standards, permits and licenses, including Environmental Laws, health, safety, building, and employment laws, as amended from time to time, of all Governmental Authorities that are applicable to the Work and any of Contractor's obligations under the Contract Documents.

"Lien" means any judgment, charge, mortgage, deed of trust, encumbrance, pledge, lease, easement, servitude, exercise of rights, powers or privileges, rights of others, security interest, or claims of any kind, including, among other things, any oral or written agreement to give any of the foregoing or arising under any conditional sale or title retention agreement or under any federal, state, county, municipal, local, or other governmental lien imposed as a result of an actual or alleged violation of any applicable Law.

"Material" means all material, equipment, components, products, supplies, goods, and documentation to be furnished by Contractor and necessary to complete the Work set forth in the Purchase Order.

"Milestone Dates" shall mean the date of Substantial Completion, the date of Final Completion, and any other dates stated in the Purchase Order or Project Schedule for a Specific Project for Contractor's completion of specific components of the Work.

"Person" means any natural person, partnership (limited, general, or other), joint venture (limited or otherwise), company (limited liability or otherwise), corporation, association, Governmental Authority, or any other legal entity of whatever kind or nature, together with any combination of one or more of the foregoing.

"Project Schedule" shall mean the schedule approved by Exelon for the performance of the Work identified in the Purchase Order for each Specific Project. The Project Schedule for each Specific Project shall be one of the Contract Documents and shall be attached as an Exhibit to the Purchase Order for the Specific Project.

"Punchlist" shall mean an itemized list prepared by Contractor and augmented, if necessary, by Exelon, of those portions of the Work, which Exelon's inspection indicates has not been completed in accordance with the requirements of the Contract Documents.

"Purchase Order" means a document issued by Exelon to Contractor incorporating by reference the Agreement which defines among other things the scope, price, and duration of the Work and the Contract Documents for the Specific Project. As used herein, Purchase Order includes documents that may be variously referred to as "contracts," "releases" or "purchase order releases" by Affiliates in their Contract Documents.

"Retiree" means a former Exelon or Affiliate employee whose employment was not governed by a collective bargaining agreement with IBEW Union Local 15 at the time of such person's termination of employment and who previously received, is eligible to receive or is currently receiving benefit payments under an Exelon tax-qualified retirement plan, including the Exelon Corporation Retirement Program (Service Annuity Plan of PECO Energy Company or Commonwealth Edison Company Service Annuity System), the Exelon Cash Balance Pension Plan and/or the AmerGen Employee Pension Plan.

"Scope of Work" shall mean the scope of Work for the Specific Project to be provided by Contractor, all in accordance with the mutually agreed upon Scope of Work set forth in the Purchase Order for a Specific Project.

"Services" means all of the labor, supervision, administration and other services identified in the Scope of Work or required to complete the Work set forth in the Purchase Order, including engineering, design, fabrication, construction, installation, demolition, testing, technical assistance, delivery of Material, if appropriate for the Services rendered, and documentation.

"Site" means Exelon's site or such other premises (including premises owned or controlled by a third-party) for which the Work is intended.

"Special Terms and Conditions" means terms and conditions not contained in any general terms and conditions but made part of this Agreement or the Purchase Order by reference.

"Specifications" shall mean the final specifications for the Specific Project to be provided by Exelon, all in accordance with the mutually agreed upon Scope of Work set forth in the Purchase Order for a Specific Project.

"Specific Project" shall mean the Work defined in the Purchase Order to be performed by Contractor at the Site.

"Staff Augmentation" means any and all Work provided hereunder that are either: (1) designated by Exelon as "Staff Augmentation", (2) not designated by Exelon as "Project", "Outsourced" or "Outage" work, or (3) are supervised or managed in the day-to-day performance by Exelon.

"Subcontractor" means any Person contracting directly with Contractor to furnish any part of the Work, or a Person contracting with a Subcontractor of Contractor (regardless of tier) to furnish any part of the Work.

"Submittals" shall mean all drawings, sketches, shop drawings, diagrams, illustrations, schedules, Contractor drawings, and other data or information, which are prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

"Substantial Completion" shall mean the point in time at which the entire or designated portion of the Specific Project is sufficiently complete such that Exelon can occupy and utilize the Specific Project for commissioning, start-up, and completion of performance, and reliability testing as required hereunder, with only Punchlist items remaining to be completed, as reasonably determined by Contractor and approved by Exelon.

"Work" means all Material and Services required to be provided by Contractor under the Contract Documents for the Specific Project. All obligations of Contractor shall be performed as specified in the Purchase Order and the Contract Documents for the Specific Project, including engineering, design, fabrication, construction, installation, demolition, testing, technical assistance, delivery of Material and documentation.

All other capitalized terms used herein as defined terms shall have the meanings ascribed to them in this Agreement.

ARTICLE 2. SCOPE OF AGREEMENT

2.1 Work.

This Agreement is not a requirements contract. Exelon reserves the right to use its own resources and to employ other contractors to perform the same or similar Work at any or all of its facilities, or at facilities of third-parties. During the term of this Agreement, following the issuance of an appropriate Purchase Order, Contractor will furnish the Work identified in the Scope of Work attached to the Purchase Order and substantially in the form of **Exhibit B** attached hereto. The issuance of a Purchase Order referencing this Agreement to Contractor by an Affiliate means that the Affiliate has agreed that all of the terms and conditions set forth in this Agreement apply to the Purchase Order, unless specifically modified. Subject to the provisions of Section 28.9, no Affiliate will have any right, interest, obligation, or liability under Purchase Orders issued by any other Affiliate. Exelon may send a Purchase Order by means of a variety of electronic commerce and electronic business process alternatives, including the use of Electronic Data Interchange ("**EDI**"). Should EDI be the selected alternative to conduct business electronically for Purchase Orders (EDI 850), Purchase Order Revisions (EDI 861), Purchase Order Acknowledgements (EDI 855), Invoices (EDI 810), Payment (EDI 820), Product Activity Data (EDI 852), and Advanced Ship Notices (EDI 856), Contractor shall follow Exelon's published implementation guidelines and be fully compliant with no less than the ANSI X-12 004010 EDI version.

2.2 Applicability of this Agreement to Purchase Orders.

Unless specifically modified, the terms and conditions set forth in this Agreement apply to each Purchase Order in which they are referenced. Subject to Section 2.5, Contractor shall not commence Work without receipt of a Purchase Order from Exelon. The Purchase Order shall specify, at a minimum, the time for performance, Scope of Work, the Contract Documents, and Contractor's price for the Work. During the

term of this Agreement, Exelon may request Contractor to perform Work by issuing a Purchase Order, signed by Exelon's Designated Representative or other authorized representative of Exelon, to Contractor. Contractor's commencement of performance of the Work shall be deemed an effective mode of acceptance of Exelon's offer or counteroffer, as the case may be, and the terms and conditions contained in this Agreement. Upon the request of Exelon, Contractor shall sign and return the Purchase Order to Exelon's Designated Representative.

2.3 Terms and Conditions of this Agreement and of Purchase Orders.

The terms and conditions of this Agreement supersede any preprinted terms or conditions on any preprinted purchase order or any printed or typed conditions forming a part of Contractor's proposal. Any non-preprinted terms and conditions contained within a Purchase Order issued by Exelon that incorporates by reference this Agreement shall supersede the affected terms and conditions of this Agreement. Any additional or different terms and conditions set forth in Contractor's proposal or preprinted purchase orders, Contractor's Purchase Order acknowledgments, or similar writings, or in Contractor's invoices or electronic data interchange acknowledgments; are objected to by Exelon and will not be binding upon Exelon unless specifically assented to in writing by an authorized representative of Exelon.

2.4 Primacy of Documents.

In the event of any conflict or inconsistency between the documents comprising the Contract Documents for a Specific Project, the authority of the individual documents for each respective Specific Project, relative to the other document, is, in descending order of authority: Purchase Order for a Specific Project; Special Terms and Conditions; Agreement; Drawings; Specifications; Contractor Specifications; and any other documents identified in the Purchase Order for a Specific Project as comprising the Contract Documents for a Specific Project. Notwithstanding the foregoing, the several documents forming the Contract Documents for a Specific Project shall be taken as mutually explanatory of one another; however, in case of ambiguities, discrepancies, or inconsistencies, the primacy of documents shall govern.

2.5 Intentionally Deleted

ARTICLE 3. STANDARDS FOR PERFORMANCE

3.1 Standards.

Contractor shall comply with all standards for the Work that are set forth in the Contract Documents.

3.2 Schedule of Performance.

Contractor shall complete all Work on or prior to the Milestone Dates for such completion set forth in the Contract Documents or the Project Schedule for a Specific Project. **TIME IS OF THE ESSENCE IN THIS AGREEMENT.** Delays or possible delays in performance of the Work or in the completion of Milestone Dates shall be reported within five (5) days after Contractor's discovery thereof to Exelon. Contractor shall take all necessary steps, at no additional cost to Exelon, to recover delays in the Project Schedule.

3.3 Final Completion.

If required by the Contract Documents, no Specific Project shall be deemed complete until after Contractor and Exelon have executed a certificate of Final Completion ("Certificate of Final Completion")

substantially in the form of **Exhibit C** attached hereto. Neither Contractor nor Exelon may unreasonably withhold its execution of a Certificate of Final Completion. However, Exelon is not required to execute a Certificate of Final Completion until all of the Work, including any Punchlist Work and any required documentation, is completed to Exelon's reasonable satisfaction. Contractor shall, at its own expense, complete all Punchlist Work (including all corrections or replacements) and test, inspect, re-test, or re-inspect, as appropriate, any portions of the Work so completed or corrected. Such tests, inspections, re-tests, and re-inspections shall be subject to verification by Exelon.

3.4 Jobsite Investigations.

Contractor represents that it (1) has inspected or has had the opportunity to inspect the Site where the Work is to be performed, (2) is not relying on any investigations performed by or information provided by Exelon relating to the conditions at the Site, (3) has ascertained all the facts concerning conditions to be found at the Site, including all physical characteristics that could in any way affect the Work or Contractor's price, and (4) has satisfied itself as to the conditions under which it will be obligated to operate. There is no condition at the Site that will adversely affect Contractor's ability to perform the Work in accordance with the terms of this Agreement.

3.5 Permits, Fees and Notices.

3.5.1 Contractor agrees to obtain and pay for all permits and approvals necessary or appropriate to perform the Work in compliance with applicable Laws, except for those permits Exelon is specifically required to obtain by virtue of the terms of this Agreement or by applicable Laws.

3.5.2 Contractor shall timely tender to Exelon copies of all governmental notices received.

3.6 Compliance with Laws and Exelon Policies and Procedures.

3.6.1 Contractor warrants that all Work performed hereunder and all Work and Work Product (as hereinafter defined) generated in connection therewith shall fully comply with all applicable Laws. Contractor shall make all notifications relating to commencement and progress of the Work as required by applicable Laws. Additionally, where not in conflict with any other provision of this Section 3.6, Contractor will comply with all applicable rules, policies, Jobsite requirements, and procedures of Exelon ("Policies and Procedures"), which shall be provided to Contractor or posted on a secure website as designated by Exelon. Exelon reserves the right to revise or update its Policies and Procedures from time to time. At the request of Exelon or on at least an annual basis, Contractor shall acknowledge in writing which rules, policies, Jobsite requirements, and procedures of Exelon it has reviewed.

3.6.2 Policies and Procedures of Commonwealth Edison Company and PECO Energy Company can each be found on its secure website. Contractor shall be given a password to access the website. Contractor shall be responsible for checking the website periodically (but in no event less frequently than monthly) for any updates or revisions to the Policies and Procedures.

3.6.3 Policies and Procedures of Exelon Generation Company, LLC, and AmerGen Energy Company, LLC can each be found on its secure website. Contractor shall be given a password to access the website. Contractor shall be responsible for checking the website periodically (but in no event less frequently than monthly) for any updates or revisions to the Policies and Procedures.

3.6.4 Policies and Procedures of Exelon Business Services Company can be found on its secure website. Contractor shall be given a password to access the website. Contractor shall be responsible for checking the website periodically (but in no event less frequently than monthly) for any updates or revisions to the Policies and Procedures.

3.6.5 Contractor warrants that it shall fully comply with those rules promulgated by the U.S. Department of Energy ("DOE") concerning Assistance to Foreign Atomic Energy Activities set forth at 10 CFR Part 810, as amended from time to time, included among which are rules regulating the granting of access to and use of DOE controlled information provided by Exelon or a U.S. person under the DOE rules. Consistent therewith, DOE controlled information assistance is within the scope of DOE's general authorization set forth at 10 CFR section 810.7 or if the transfer of such information is authorized by a special authorization issued by DOE pursuant to 10 CFR section 810.10.

3.7. Compliance with Code of Business Conduct.

In the performance of any activities related to the Work, Contractor, Subcontractors, and their respective agents and employees involved in the Work, shall adhere at all times to the provisions contained in Exelon's Code of Business Conduct, which can be found on its website, http://media.corporate-ir.net/media_files/irol/12/124298/corpgov/exc_codebusconduct_061013.pdf, or in booklet form upon request. In conjunction therewith, Contractor, Subcontractors and their respective agents and employees, upon request by Exelon, shall complete a Certification of Compliance in a form provided by Exelon.

3.8 Disaster Recovery and Business Continuity.

Contractor shall provide backup, disaster recovery and storage capabilities so as to maximize availability and progress of the Work during an event that would otherwise affect the performance or delivery of the Work. At a minimum, such capabilities will provide for restoration of Work within the timeframes set forth in the Disaster Recovery Plan. Contractor's responsibilities shall include the following:

3.8.1 Back-up and store Exelon Data (on tapes or other storage media as appropriate) on-site for efficient data recovery and off-site to provide protection against disasters and to meet file recovery needs.

3.8.2 Conduct incremental and full back-ups (in accordance with the Disaster Recovery Plan) to capture data, and changes to data.

3.8.3 Develop, maintain and submit a Disaster Recovery Plan to Exelon including plans, measures and arrangements to ensure the continuous delivery of critical products and services, which permits Contractor to recover its facility, data, assets and personnel. In the event of a disaster, Contractor shall assume responsibility for providing the services in accordance with the Disaster Recovery Plan.

3.8.4 Generate a report following each and any disaster measuring performance against the Disaster Recovery Plan and identification of problem areas and plans for resolution.

3.9 Subcontractor Compliance.

Contractor shall require that all its Subcontractors comply with all requirements of this Article 3.

ARTICLE 4. WARRANTIES

4.1 Performance of Work.

Contractor warrants that the Services furnished to Exelon under this Agreement shall (1) comply with the specifications contained in the Contract Documents, and (2) be performed in accordance with the then prevailing applicable Laws, and industry standards and practices.

4.2 Remedies.

If any of the Services do not comply with the foregoing warranties and Exelon notifies Contractor within 1 year (or such longer period as specified in the Contract Documents, or provided by a manufacturer, supplier, or Subcontractor) after the date Exelon has accepted or, where required by the Contract Documents, Exelon has signed a Certificate of Final Completion for the Services, then Contractor shall (at its sole expense) promptly replace or re-perform the nonconforming Services. All such re-performed Services shall be performed on a schedule to be agreed upon by Exelon. The warranty for any such re-performed Services pursuant to Section 4.1 shall be 2 years from the date of Exelon's acceptance of such re-performed Services, or for the duration of the unused warranty period if such period is longer.

4.3 Inspection.

Exelon's inspection, testing, acceptance, payment, or use of any Services shall not affect the warranties and obligations of Contractor under this Agreement or the Contract Documents, and such warranties and obligations shall survive any such inspection, testing, acceptance, payment, or use.

4.4 Exelon's Right to Perform.

In the event of Contractor's failure to re-perform the Services, in accordance with the terms hereof, Exelon, after notice to Contractor, may correct any deficiencies in the Services, or may purchase replacement Services. Exelon may either invoice Contractor for the cost of correcting the deficiencies (including the costs directly attributable to other services that are required to be performed in connection with the correction of such deficiencies), invoice Contractor for the cost of replacement, or, deduct the cost associated with correction or replacement from any payments due or subsequently due Contractor.

4.5 Assignment of Warranties.

Contractor agrees that it will obtain and shall and does hereby assign to Exelon the benefits of any warranties provided by Subcontractors of the Services and will perform its responsibilities so that such warranties remain in full force and effect. Such assignment shall not relieve Contractor of its warranty obligations to Exelon under this Agreement or the Contract Documents.

ARTICLE 5. PAYMENT

5.1 Pricing for Services.

In consideration for the performance of acceptable Services, unless otherwise stated in the Purchase Order, Exelon will pay to Contractor the prices provided in the Pricing Schedule attached hereto as **Exhibit D**, which prices shall remain fixed for the term of this Agreement or, if shorter, the period set forth in the

Pricing Schedule.5.2 Taxes.

Except for state sales or use taxes that apply to this purchase, Contractor's price is inclusive of any and all taxes, fees, excises, and charges which are now or hereafter imposed by Governmental Authority with respect to the prices set forth in the Pricing Schedule and/or the Purchase Order, and Exelon shall not be required or obligated to reimburse Contractor for any taxes or similar expenses which may arise or be incurred in connection with delivery of the performance of the Services. The invoice shall separately list taxable and nontaxable charges where applicable. Unless Exelon provides Contractor an exemption certificate or notifies Contractor that Exelon will pay such taxes directly to the applicable Department of Revenue, then (i) state sales and use tax, where applicable, shall be billed on the invoice if Contractor is authorized by applicable Law to collect such tax or (ii) if subsection (i) is not applicable, the tax shall be billed on an invoice as reimbursement by Exelon to Contractor at the time Contractor pays such tax to the appropriate state. Contractor shall bill Exelon for collection or reimbursement of taxes, as applicable, prior to Final Completion and shall bill as a dollar for dollar collection or reimbursement, as applicable (dollar collection/reimbursement for dollar paid by Contractor). To the extent Contractor fails to bill Exelon pursuant to this Section 5.2, then Contractor shall be responsible for all penalties and interest payments associated with such failure (whether assessed to Exelon or Contractor) and the payment of such tax if Section 5.9.5 is applicable. Contractor shall not include state sales or use tax in its prices for the Services. Exelon shall have the right to direct the basis on which any taxes included in the prices or for which it may be responsible will be paid or contested and to control any contest, including the right to initiate any contest, in the name of Contractor. Exelon shall reimburse Contractor for any interest, penalties, or expenses Contractor may incur as a result of any contest initiated or any direction given by Exelon with respect to the payment of such taxes. Contractor will promptly furnish Exelon with all information Exelon requests for the purpose of determining the amount of any tax liability under this Agreement. At the request of Exelon, Contractor shall prepare, execute, and deliver to Exelon a Federal Form W-9 or the equivalent thereof. Contractor shall comply with the reporting requirements of all Governmental Authorities, and, upon the request of Exelon, will provide proof that Contractor has complied with such reporting requirements.

5.3 Submission of Invoices.

Contractor shall submit invoices to Exelon, at the location designated by Exelon on the Purchase Order, as follows: (i) if Work is complete in less than 30 days, then Contractor shall submit an invoice within 30 days after completion of Work; or (ii) if Work is completed in more than 30 days, then Contractor shall submit an invoice every 30 days for Work performed during the previous 30 day period. Unless otherwise specified in the Purchase Order, the invoice shall be submitted in electronic format to "A/PInvoices@exeloncorp.com". Subject to Section 5.9, Exelon shall pay all undisputed invoices within forty-five (45) days after receipt and acceptance by Exelon of the invoice.

5.4 Invoice Format and Copies.

Contractor shall submit one original invoice to Exelon's Accounts Payable and, upon the request of Exelon's Designated Representative, one duplicate of each invoice shall be sent to Exelon's Designated Representative. Each invoice shall include: (a) Contractor's name and address; (b) Purchase Order number, release number (if applicable); (c) date, (d) itemization of services rendered and applicable fees; and (e) total amount due for the time period covered by the invoice. If the Work is being performed pursuant to a cost-plus or time-and-material (or any variation thereof) Purchase Order, each invoice shall also include a detailed itemized list of the costs of Work covered by the invoice identifying the number of

each class of employees, number of regular hours worked, number of overtime hours worked, rates charged, a copy of all Subcontractor itemized invoices, separately itemized charges for freight, for all material used, all adequately described, with all applicable sales and use taxes stated. No overtime hours shall be charged to Exelon without Exelon's prior written approval. Overtime hours shall be billed as such rather than as a greater number of regular hours. Each invoice shall also identify all authorized expenses incurred during the time period, and shall be accompanied by supporting documentation. Invoices that Exelon deems inaccurate or incomplete, in Exelon's sole discretion, may be returned to Contractor for correction and re-submittal.

5.5 Intentionally Deleted

5.6 Intentionally Deleted

5.7 Reports.

5.7.1 If required by Exelon, Contractor shall submit to Exelon on the first Day of each month following the month in which the Purchase Order is dated, a report dated up to the day before submission thereof, in such form as shall be specified by Exelon, showing the progress made by Contractor toward the completion of the Work to the date of each report. Each report shall include an updated Project Schedule, a list of Contractor's and its Subcontractors' employees performing Work at the Site, and a discussion of Contractor's planned activities for the next month. Contractor shall continuously monitor, report, forecast, and control the progress of the Work in accordance with the Project Schedule. Contractor shall provide increasing scheduling detail as the Work progresses. Contractor's reporting shall be sufficiently detailed to present to Exelon an accurate status of the Work's Project Schedule, variances from the Project Schedule and reasons therefor, and corrective action planned.

5.7.2 If Exelon requires a report pursuant to Section 5.7.1 and if the Work is being performed pursuant to a cost-plus or time-and-material (or any variation thereof) Purchase Order, Contractor shall submit a weekly report to Exelon for each Specific Project. Each report shall include, in addition to the information required by Section 5.7.1, the following: (1) time sheets listing Contractor's and Subcontractor's employees, with occupation descriptions and number of regular and overtime hours worked; and (2) a list of chargeable material and quantities.

5.8 Change Orders Affecting Price.

No Change Order that has the effect of increasing the cost to Exelon (whether because of an increase in the prices for the Services, the amount or the scope of the Services, or otherwise) shall be binding upon Exelon unless the same is approved in writing by Exelon.

5.9 Grounds for Not Paying Invoices.

Exelon may decline to pay an invoice, in whole or in part, due to any of the following:

5.9.1 Material breach by Contractor of any of its obligations under this Agreement or Purchase Order, including the costs to Exelon of remedying the breach (whether by re-performing the Services or otherwise) and all other costs directly attributable to other services that are required to be performed in connection with remedying such breach;

5.9.2 Contractor's failure to properly pay Subcontractors;

5.9.3 Reasonable evidence that the Services will not be completed within the time requirements specified in the Purchase Order or Project Schedule; or

5.9.4 Unsubstantiated or unsupported amounts billed by Contractor.

5.9.5 Contractor's failure to submit an invoice within 180 days of the applicable submission provisions of Section 5.3.

5.10 Final Payment.

Subject to the fulfillment of Contractor's obligations under the Contract Documents, final payment of all moneys due but not previously paid to Contractor hereunder shall be made within forty-five (45) days after receipt by Exelon of Contractor's final invoice ("Final Payment"), subject, however, to the condition precedent that Final Payment shall not be due until Exelon accepts the Work, or, if required by the Contract Documents, Exelon and Contractor execute a Certificate of Final Completion and, on Specific Projects involving the construction of improvements to Exelon's property, Contractor shall have given Exelon evidence satisfactory to Exelon that all liens, claims, obligations, and liabilities against Exelon and its premises (including the Specific Project and the Site), or in respect to the Work or chargeable to Exelon have been fully paid, satisfied, and released. Such evidence shall include Contractor's final, unconditional lien waiver for the final cost of the Work performed by Contractor.

5.11 Payment Not Waiver of Contractor's Breach.

No partial payment or Final Payment made by Exelon or the execution of a Certificate of Final Completion shall be construed as a waiver of any breach hereof by Contractor or as an acceptance of defective portions of the Work or of any of the Work which does not strictly comply with all requirements of the Contract Documents.

5.12 Right to Setoff.

Exelon may setoff against any amount payable under this Agreement or a Purchase Order any and all present and future indebtedness of Contractor to Exelon (including any indebtedness for which Exelon may be primarily or contingently liable or ultimately responsible or which is or may become a lien on any property of Exelon) arising from this Agreement or a Purchase Order.

ARTICLE 6. LIQUIDATED DAMAGES

If agreed by the parties, in the event of a delay by Contractor in achieving Substantial Completion as specified in the Purchase Order or Project Schedule, for any reason that is not excused under Section 12.3, Contractor shall pay to Exelon as liquidated damages the amounts specified in the Purchase Order.

ARTICLE 7. TERM

7.1 Initial Term.

The term of this Agreement shall be ___ years from the Effective Date or if no term is specified then 1 year from the Effective Date.

7.2 Renewal Terms.

Upon the expiration of the initial term of this Agreement, this Agreement shall be automatically renewed on a month-to-month basis, provided that either party may terminate this Agreement thereafter by providing at least 30 days written notice to the other party of such termination. However, the terms of this Agreement will survive such termination until a Certificate of Final Completion or Final Payment is issued for all Purchase Orders issued pursuant to this Agreement and other obligations, such as warranty obligations, which by the terms of this Agreement continue beyond the termination of this Agreement. Notwithstanding anything herein to the contrary, the termination of this Agreement shall not affect or excuse the performance of either party pursuant to any then effective Purchase Order(s), except as otherwise provided in Article 17.

ARTICLE 8. CONTRACTOR'S DRAWINGS; SAMPLES

8.1 Drawings.

Any drawings or Submittals required by this Agreement to be submitted to Exelon for review shall be submitted by Contractor without unreasonable delay, and any Work affected thereby started prior to written acceptance by Exelon shall be at Contractor's risk. All drawings or Submittals provided by Contractor may be used by Exelon in connection with the installation, startup, maintenance, operation, and repair of the Work and may be transferred to any transferee of the Work. Review by Exelon shall not relieve

Contractor from fulfilling all of Contractor's obligations under this Agreement or the Contract Documents, including obligations relating to design and detailing. As far as practicable, each drawing or Submittal shall bear a cross-reference note referring to the sheet number or numbers of Exelon's drawings showing the same Work.

8.2 Samples.

If Exelon has requested a sample or mock up of all or any portion of the Work, Contractor shall not commence the associated Work until Exelon has received such samples, or reviewed such mock up, and acknowledged in writing its acceptance of such samples or mock up. All Work is required to conform to such samples or mock up, and no change in the Work or its method of production shall be made without the written consent of Exelon.

ARTICLE 9. EXELON'S PROPERTY

All tools, tooling, designs, patterns, dies, molds, drawings, and other materials supplied by Exelon remain Exelon's property, and Contractor agrees to maintain a log upon receipt of such Exelon-furnished property which will be used for final disposal or return of such property based on instructions furnished by Exelon. Contractor shall at its expense maintain all such property in its possession in good condition and repair and indemnify Exelon for all damage or loss to such property (other than ordinary wear and tear). Contractor agrees that use of any such Exelon property will not affect the warranties set forth in the Agreement or the Contract Documents.

ARTICLE 10. PERFORMANCE OR PROCUREMENT PROVISIONS

In the event of termination of this Agreement or change in the Work, no claim will be allowed for performance or procurement in advance of the Project Schedule, except as was reasonably necessary to meet deliveries required by the Project Schedule.

ARTICLE 11. CHANGES IN THE WORK

11.1 Exelon Changes.

Exelon shall have the right to order changes, through a written Change Order, to be made in the Work, including changes in the Specifications, Contractor Specifications, drawings, designs, and time and place of delivery. If these changes affect Contractor's costs, performance schedules, warranties, and other provisions of this Agreement and/or the Purchase Order, the prices and other affected provisions shall be equitably adjusted by agreement between Contractor and Exelon. Any adjustments shall be preceded by Contractor's detailed proposal therefor. Unless otherwise agreed to in writing by Exelon, Contractor shall bear the costs of such detailed proposal.

11.2 Claims.

If Contractor has any claim against Exelon, such as for extra work, changes, or delays, notice of each such claim shall be submitted in writing to Exelon. Any claim by Contractor shall be deemed waived unless made in writing within ten (10) days after the occurrence of the event which precipitated the claim.

Notwithstanding anything to the contrary, no claim shall be allowed if asserted after Final Payment pursuant to the Purchase Order.

11.3 Payment for Changes.

All requests for payments made pursuant to a Change Order shall be shown separately on Contractor's invoices, and shall not be included with amounts applicable to the prices as originally specified in the Agreement or a Purchase Order. All invoices covering additions to or credits due under this Agreement or a Purchase Order shall refer to the specific Change Order issued by Exelon with respect to the addition or credit, and will not be honored unless this reference is included.

ARTICLE 12. DELAY AND ACCELERATION

12.1 No Extension of Final Completion Date.

If Contractor is delayed at any time for any reason during the execution and completion of any portion of the Work, then Contractor shall employ additional personnel as are reasonably necessary to accelerate the progress of the Work to meet the Milestone Dates identified in the Purchase Order or Project Schedule. Subject to the provisions of Section 12.2, Exelon will not pay and Contractor shall bear Contractor's increased costs related to Contractor's accelerated performance. Subject to the terms of the Contract Documents, Contractor acknowledges and agrees that no extension to the date of Final Completion identified in the Purchase Order or Project Schedule shall be granted unless agreed to in writing by Exelon and Contractor.

12.2 Compensable Delay Claim.

If Contractor's need to accelerate its Work is caused by a Compensable Delay (as defined in Section 12.3), then Contractor shall make a written claim to be compensated for Contractor's increased costs resulting from the Compensable Delay as Contractor's sole remedy for such a Compensable Delay.

12.3 Compensable Delay.

For purposes of this Agreement, compensable delays ("Compensable Delay") shall include only the following events and only if they impact the critical path of the Specific Project: (1) material neglectful act or omission by Exelon; and (2) material change ordered in the Work not due to Contractor's fault.

12.4 Acceleration Ordered by Exelon.

If Contractor does not perform the Work in accordance with the Project Schedule and a Change Order has not otherwise been agreed to and executed by the parties, then Exelon may, in its sole discretion, direct Contractor to accelerate the Work by employing additional personnel or providing overtime to existing personnel as is necessary to complete the Work by the Milestone Dates. The costs associated with the acceleration ordered by Exelon shall be at Contractor's expense, except to the extent Exelon accepts Contractor's submitted claim for a modification to Contractor's costs pursuant to Section 12.2.

ARTICLE 13. LOSS OR DAMAGE

Risk of loss or damage to the Work or any property of Exelon in the custody of Contractor shall remain with Contractor until Exelon accepts the Work, or, if required by the Contract Documents, Contractor and